A Publication of the State Bar of California

Message from the Former Chair: Become A Certified Specialist

Become a certified specialist in your field...and set yourself apart from the other associates seeking that elusive partnership slot. While the standards are high, certification is within your reach.

There are approximately 44 certifications available in state and private programs. About 31,000 attorneys have been certified in their particular areas of expertise.

The populous states of California, Texas, Florida, and New Jersey -- along with the smaller states of Minnesota, New Mexico, North Carolina, South Carolina and Tennessee -- have attorney certification programs. California has more than 4,000 certified specialists. Certification is currently available in: Appellate Law; Bankruptcy Law; Criminal Law; Estate Planning, Trust and Probate Law; Family Law; Franchise and Distribution Law; Immigration and Nationality Law; Taxation Law; and Workers' Compensation Law.

Private organizations also certify attorneys. The American Bar Association Standing Committee on Specialization (http://www.abanet.org/legalservices/specialization) and the California Board of Legal Specialization (http://californiaspecialist.org) accredit the best of these pri

of Trial Advocacy, http://www.nbtanet.org); Criminal Trial Advocacy (National Board of Trial Advocacy); Family Law Trial Advocacy (National Board of Trial Advocacy); Elder Law (National Elder Law Foundation, http://www.nelf.org/findcela.asp); Accounting Malpractice (American Board of Professional Liability Attorneys, http://www.abpla.org); Legal Malpractice (American Board of Professional Liability Attorneys); Medical Malpractice (American Board of Professional Liability Attorneys); and Juvenile Law (Child Welfare) (National Association of Counsel for Children, http://www.naccchildlaw.org).

Certification programs help consumers and lawyers identify qualified attorneys in specialty areas. The programs also encourage attorneys to improve their skills as they reach for certification. As former Florida Attorney General Charlie Crist noted, certification "is an excellent opportunity for individual lawyers to specialize in an area of interest and advance their level of professionalism." Crist also said "participation in the program benefits all...lawyers, as board-certification advances ethical credibility within the legal profession and creates

J. Scott Bovitz

a network of highly-qualified attorneys with an improved ability to serve their client's legal needs."

A certified specialist earns peer recognition. In 2005, Congress recognized

In This Issu

Annual Meeting Awards Reception 3

Judge Thomas Trent Lewis 4

Estate Planning for Non-Traditional Couples 5

Bob Weeks: Certified Criminal Law Specialist 7

Marketing your Certification 8

Technical Notes from Bovitz.com 9

Lex Lingua: Part II 11

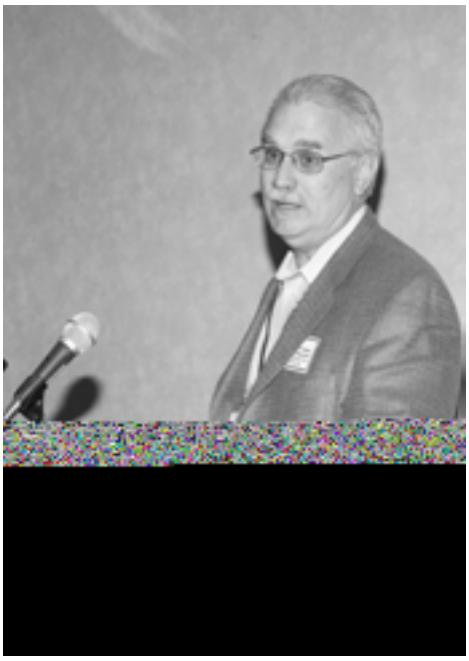
that certified specialists may be able to justify a higher hourly rate than their contemporaries. See, for example, 11 U.S.C. § 330(a)(3)(E) (regarding awards of fees to bankruptcy professionals).

Steve Lowe (slowe@aherninsurance.com) of Ahern Insurance Brokerage promises that he can obtain a 5% or 10% discount on malpractice insurance premiums for law firms with certified specialists. (The California Board of Legal Specialization regrets that it cannot endorse any particular program or insurance carrier.)

To be certified as a specialist, a California attorney must be involved in her field for the past five years, pass a written examination in her specialty field, demonstrate a high level of experience in that field, fulfill heavy education requirements in the field, and be favorably evaluated by other attorneys and judges familiar with work. Refer to http://californiaspecialist.org for the detailed certification requirements (or to find a certified specialist). The next examination will be in August 2007, so mark your calendar.

If you have any questions about the California program, drop me a note (bovitz@bovitz-spitzer.com) or give me a call (213-346-8300). I hope to see your application, soon. ■

J. Scott Bovitz (bovitz@bovitz-spitzer.com) is the senior partner of Bovitz & Spitzer in Los Angeles (http://bovitz-spitzer.com). Bovitz is a Certified Specialist in Bankruptcy Law (State Bar of California Board of Legal Specialization) and is the immediate past Chair of the State Bar of California Board of Legal Specialization (http://californiaspecialist.org). Bovitz is also Board Certified in Business Bankruptcy Law (American Bankruptcy Board of Certification) (http://abcworld.org) and is the executive editor of the CEB publication, "Personal and Small Business Bankruptcy Practice in California." He has also written, recorded, and posted more than 142 songs on the Internet (http://bovitz.com).

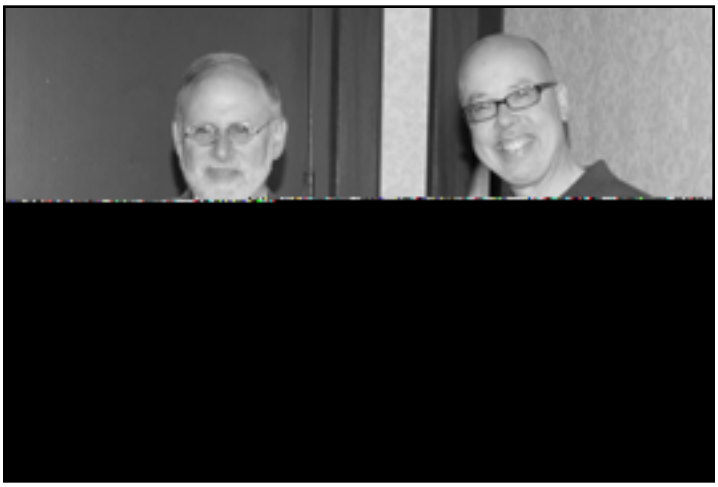


To contribute to the Digest, please e-mail Brad Watson at brad.watson@calbar.ca.gov

The Legal Specialization Digest is a bi-annual newsletter written by and for certified specialists, containing articles of interest to legal specialists. The Digest also contains periodic updates on the certification program, general information from the State Bar and the Board of Legal Specialization, columns from the BLS Chair and BLS members, attorney profiles, and more.

Annual Meeting Awards Reception

Specialists in judicial service and those who have been certified for 20 and 30 years were honored by the Board of Legal Specialization (BLS) on October 6, 2006 at its annual breakfast reception held in conjunction with the State Bar Annual Meeting in Monterey, CA. The class of 1976 honorees included 12 taxation law specialists, eight workers' compensation law specialists, and six criminal law specialists. Making up the class of 1986 were three taxation law specialists, seven workers' compensation law specialists, nine criminal law specialists, and 11 family law specialists.



Outgoing BLS chair J. Scott Bovitz (right) receives a certificate of appreciation from his successor, Myron S. Greenberg.

Scott Bovitz at breakfast reception with Texas Board of Legal Specialization speakers Gary McNeil (left) and Claude DeCloux (right).

Judicial service honorees this year were Superior Court Judges Jeffrey Y. Hamilton and Linda A. McFadden, certified criminal law specialists, and Superior Court Judges Thomas T. Lewis and Sandra L. McLean, certified family law specialists.

Featured speakers at the reception were Gary McNeil, Executive Director, Texas Board of Legal Specialization (TBLS), and Claude DeCloux, a TBLS certified specialist in civil trial and appellate law, who spoke on "Legal Specialization – Texas Style." They were followed by Richard L. Dombrow, BLS certified family law specialist, and Michael C. Ferguson, BLS certified estate planning, trust and probate law specialist, speaking on "The State of New Areas of Specialization in California." ■

30-year certified taxation law specialist Howard L. Sanger (right) receives his award from BLS chair J. Scott Bovitz.

Twenty-year honoree, certified family law specialist Michelle Katz, with former BLS chair John W. Muns

Annual Meeting Awards Reception: Judge Thomas Trent Lewis

By: Teresa Y. Warren

Judge Thomas Trent Lewis

Legal specialization has a big fan in Judge Thomas Trent Lewis. The family law judge has first-hand knowledge of what it means to be a certified specialist – he received his family law certification in 1986, was elected to the Board of Legal Specialization (BLS) in 1993, and served two terms as BLS chair from 1997–1999.

Speaking at the annual BLS breakfast reception in October, which honors 20- and 30-year certified specialists and those on judicial service, and during a post interview, Judge Lewis expressed his appreciation of certification. "Being a certified specialist demonstrates an inward commitment to excellence and really wanting to do a great job," stated Lewis. "You can be a good generalist or a great specialist." He also noted the status in the community that comes with certification and economic benefits as reasons for getting certified.

In contrast, Judge Lewis also noted the myths that come with certification, including "I won't pass the mid-career exam" and "I'll get sued for malpractice." While he understands the concern regarding an exam, he believes that experience is the perfect basis for passing the test and his experience has shown that the concerns regarding malpractice are unfounded.

Judge Lewis serves on the bench in Los Angeles, the busiest divorce court in the world. He shared that he frequently can tell which of the attorneys appearing before him are specialists because they use the moniker of CFLS. He also noted that there is a high correlation between those attorneys that are dedicated to family law and certification.

Joining a small firm after being sworn in to the bar in 1984, Judge Lewis began his family law career, which he viewed as "part business litigation and part social engineering." Throughout his practice. he "did it all and liked all of it." Judge Lewis' decision to join the bench was to contribute to his vision for positive changes in the family court. While he views the current system as working well, Judge Lewis believes the court needs to "continue to challenge ourselves."

Judge Lewis' tenure as chair of the BLS coincided with the years during which the legislature defunded the State Bar. He tirelessly worked to position the BLS as a separate entity that is self-funded and unique in its services. He continually communicated that, whatever the concerns were regarding the Bar, the BLS stood apart. His fondest memory from those years was working with fellow board members Mike Ferguson and Dick Dombrow and BLS staffer Phyllis Culp on the ABA National Roundtable on Specialty Certification. ■

** Teresa Y. Warren, founder of San Diego-based TW2 Marketing, has 25 years of law firm marketing expertise. She is a public member of the California Board of Legal Specialization.*

You will find the complete rosters of BLS and Advisory Commission members at: www.californiaspecialist.org. If you are interested in serving on a Commission, the BLS, or any other State Bar committee, you can download an application from the State Bar website,

www.calbar.ca.gov.

The application deadline is February 1, 2007.

BLS chair J. Scott Bovitz congratulates Grego
on his 20 years as a certified criminal law specia

Estate planning for Non-traditional Couples

By Howard S. Klein and Geoffrey M. Murry

Although the majority of estate plans created by practitioners will contemplate marriage between the settlor and a person of the opposite sex, life and the practice of law in the 21st century dictate that not all of those who seek the services of estate planning specialists and other estate and probate professionals will fit that mold. With that simple fact in mind, the author here surveys the current legal landscape in California and addresses the concerns of providing legal counsel to clients whose households challenge the traditional concepts of a family.

I. THE NEW LANDSCAPE OF CALIFORNIA DOMESTIC PARTNERSHIPS

The Establishment of State Recognized Domestic Partnerships

In 2000, the California legislature enacted and then Governor Davis signed legislation involving same-sex partners living together in committed relationships. The signal legislation in this field, the California Domestic Partner Rights and Responsibilities Act ("DPRRA"), [AB 205, comprising Division 2.5, including Sections 297-299.6, of the Family Code], was signed into law in 2003 and became fully effective January 1, 2005, creating perhaps the broadest grant of a marriage-like status to same-sex couples among those 49 states that do not recognize same-sex marriage[1]. As a result, nonmarried eligible couples who have already properly registered as domestic partners or who so register in the future have essentially all the rights and obligations of married persons under California law[2]. DPRRA was amended in 2004 by a "cleanup bill" [AB 2580, being Family Code Section 297.5(m)(1)], which provided that a domestic partnership would be deemed to exist on the date of its registration with the state (thus giving retroactive effect to the provisions of DPRRA as to those registered domestic partnerships which predated the effective date of the statute).

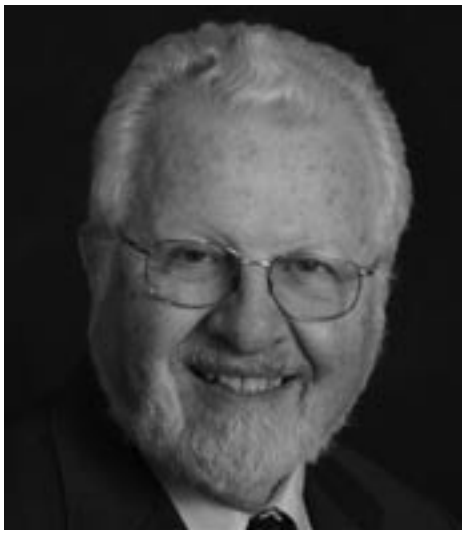
The requirements of registration as domestic partners are largely identical to the requirements of marriage, with the exception that the parties must live together and, if the parties are not of the same sex, that at least one of the parties meets the eligibility requirements for the receipt of Social Security old-age benefits and at least one of them is aged over 62 years. As with prospective opposite-sex spouses, neither of the parties can be already married or registered as a domestic partner; they cannot be related by blood within the degree that the blood relationship would prohibit marriage; and each must meet the age and consent requirements.

Family Code Provisions

Family Code Section 297.5(a) makes explicit the legislative intent that its provisions be construed liberally in order to provide a full range of rights to registered domestic partners, whether such rights, protections and benefits, and responsibilities, obligations and duties derive from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law. Thus, registered domestic partners have been accorded hundreds of rights and obligations of community property and community debt, support, fiduciary duties, duties with respect to children of the relationship that married persons have, hospital visitation, medical decision-making, financial and legal decision-making, recovery for wrongful death, access to records, sick leave, financial support, community property and related rights, "marital privileges" in legal proceedings, and fiduciary duties to one's domestic partner.

Probate Code Provisions

Registered domestic partners now have essentially the same rights as married persons under the Probate Code. These include (a) the right to an intestate share of a deceased partner's estate[3], (b) the same priority to a right to appoint an administrator of a deceased partner's estate[4], and (c) the same priority of right to serve as or nominate a conservator[5]. The vast majority of changes to the Probate Code consist of amendments to the statutory language to provide for domestic partners or domestic partnerships as a logical analog to statutes mentioning spouses and marriage[6] or to include domestic partners in the list of affected or interested persons[7,8] Entirely new Probate Code sections, added in 2001, include Sections 6122.1, which is the analog to Section 6122, regarding the effect of divorce on spousal testamentary provisions, and Section 4716, which gives a patient's domestic partner the same authority as would have a spouse in making health care decisions for the incapacitated patient.



Howard S. Klein

Rights Not Conferred Upon Registered Domestic Partners

The Act does not affect the California Defense of Marriage Act[9], which provides that the only lawful marriage in this state is one between a man and a woman. More importantly, the Act expressly does not amend or modify federal law[10].

This is highly significant from a tax standpoint in several ways: It denies to domestic partners the federal estate tax marital deduction and the ability to file joint federal income tax returns. Further, Internal Revenue Code section 1041 does not apply to transfers made in connection with the dissolution or legal separation of registered domestic partners, because 1041

only applies to transfers involving spouses or former spouses. In addition, the spousal property transfer exemption of Internal Revenue Code Sections 2056 and 2523 probably does not apply, and such transfers would be treated as taxable gifts.

With regard to taxation on the California state level, Governor Schwarzenegger recently signed into law a bill that allows registered domestic partners to file joint state tax returns. Although having no effect on federal treatment of domestic partners, SB 1827, which became law in early October, is likely to result in beneficial state tax treatment for many registered domestic partners. However the benefits may be outweighed by the potential complications of an individual filing a joint state tax return but still being forced to file federal taxes as single or head of household.

Finally, registered domestic partners are denied federal rights involving Social Security, Medicare, veterans' benefits, immigration, ERISA and family leave, among others.

Termination or Modification of Registered Domestic Partnership

Family Code section 299 sets forth two currently available procedures for terminating a registered domestic partnership. First, if the partnership is less than five years in duration, there are no children of the relationship, the asset and debt amounts are *de minimus*, there is no real property except for a short-term lease and the parties waive support and have executed a property settlement and related documents, the parties may execute and submit to the Secretary of State a Notice of Termination of Domestic Partnership. This procedure is similar to the summary dissolution procedure of Family Code section 2400.

For all other registered domestic partnerships, the Family Court has exclusive jurisdiction over proceedings relating to the dissolution or nullity of the partnership and the legal separation of partners. The procedures are equivalent to those involving married persons. Thus, all rights and obligations that attach in marital status proceedings will apply to domestic partnership status proceedings, including equal division of community property, debt liability, spousal support, standard temporary restraining orders ("ATROs"), child custody and support determinations, and *pendente lite* orders. Note that the ATROs, which are set forth in Family Code Section 2040, are just as significant a factor in estate planning which occurs during the dissolution of a domestic partnership as they are in estate planning in the course of a marital dissolution.

Possible Downsides to Registered Domestic Partnerships

Clearly, one or both of the domestic partners may elect not to register under DPRRA, for one or more of the following reasons:

1. The wealthier partner may not wish to commit to paying support either during the partnership or following domestic partnership dissolution.
2. The higher earner may wish to retain his/her earnings as separate property rather than have them characterized as community property, as to which the lower earner would have a one-half entitlement.
3. The equal division of community property in the event of dissolution may be unattractive to the partner whose efforts produced most of that property, and that partner might just want to retain that property, or most of it, as his/her separate property.
4. If one of the partners is a spendthrift, the other partner might not want to be liable for the spendthrift's debts.
5. If one of the partners is a low-income individual who would otherwise qualify for state benefits, e.g. Medi-Cal, that qualification might be eliminated if the state considered the other partner's income, which would be the case with registered domestic partners.
6. The partnership can only be terminated judicially unless it is short term with no children and but little assets and the partners waive support.

Options Available to Domestic Partners

Domestic partners can elect to either register or not register under the Act. The decision should not be a strictly emotional one, but should involve considerations of the finances and health of each of the partners, the stability of the relationship, among other issues, and the pros and cons of a entering into a legal relationship which is entirely "marriage-like".

Under any circumstances, the domestic partners should seriously consider contracting as to the manner, rights and responsibilities of holding property, income, debt and support issues. And, of course, the parties should do estate planning. In this regard, while there is no federal estate tax marital deduction, the registered domestic partnership could involve the community property exclusion and the use of an equitable life estate on the death of the first partner to die.

II. ESTATE PLANNING FOR COUPLES WHO HAVE NEITHER MARRIED NOR REGISTERED AS DOMESTIC PARTNERS

Ethical Issues

The attorney should explain to the partners (a term used throughout to indicate two persons of either same or opposite-sex who have neither married or officially registered as domestic partners) that an attorney must represent the interests of each of his/her clients and may not keep any confidences from either one of them (as compared to keeping what he/she or either partner tells the other partner or him/her from third parties). The attorney must explain the possibility of conflicts that may arise in ownership of assets (as belonging either to one partner or the other partner or both of them) and as to the distribution of assets.

The attorney must advise that both of the partners have the right to seek independent counsel. The attorney must also remember that he or she can represent both partners only if they sign a conflict of interest waiver/dual representation letter, and the partners have been

Con t in u ed on Page 13

Bob Weeks: Certified Criminal Law Specialist to Retirement and Beyond

By James W. Talley *

Bob Weeks retired from the Santa Clara County Public Defender's Office in 2000, after 30 years of distinguished service. Since he retired from active practice six years ago, you might ask, why is he the subject of this bio piece? The answer is simple and illuminating. In 1979, after nine years of practice with the Public Defenders' Office, and having gained substantial experience in defending a variety of criminal defendants, he determined that certified specialization was a reality and that he wanted to be in on the "ground floor" of certified specialization in criminal law. In response to the question why an attorney with the Public Defenders' Office in Santa Clara County would have any motivation to become a certified specialist, since it was not a requisite for being promoted, he provided some insight on his decision. When he made his decision, he was joined by fellow Public Defenders Len Edwards (now a highly honored Juvenile Court Judge), Guy Jinkerson and Geoff Braun, who formed a study group to take and pass the 1979 certified specialization test in criminal law. What was their motivation? Collectively, they thought there was the possibility of their compensation being enhanced (wrong). More importantly, however, they all agreed that the pursuit of excellence in criminal defense law was reason enough to pursue certified specialization. Each of the four members of their study group wanted to pursue a mastery of the art of criminal defense law practice.

In 1979, after nine years of practice with the Public Defender's Office, and having gained substantial experience in defending a variety of criminal defendants, he determined that certified specialization was a reality and that he wanted to be in on the ground floor of certified specialization in criminal law.

As to the rewards, Bob points out that as a member of the Public Defenders Office, he often had to listen to clients suggest that their cellmate might be represented by a better attorney (translated a privately retained attorney). In response, Bob would routinely ask, "*Is your cellmate's attorney a certified criminal law specialist*?" After Bobs clients checked with their cellmates and found that the answer was "*No*," the notion that all attorneys from the Public Defenders Office were second rate was debunked. In the same vein, Bob points out that he routinely received an AV rating from Martindale Hubbel, which is unusual for public attorneys.

When asked about his experience with the legal specialization test in criminal law, he said that "the test was hard," "very specific," and amounted to a "down in the trenches experience." He also recalled that in the late 70s there were no courses offered to prepare one to take the criminal law specialization examination. He also points out that preparing for the specialization examination was an exercise in a comprehensive review/overview of criminal law that he had not undergone before. Bob also states that without certified specialization and the requirement of preparing for the test, he would not have been limited by default to researching and dealing only the law applicable to "tomorrow's case."

Bob Weeks

Asked why he pursued certified specialization in criminal law, despite the fact that it ultimately provided no financial enhancement to his career, he responded that "a combination of experience in educational requirements to become a certified specialist and the many hours participating in the study groups to prepare for and take a test, along with the requisite peer review puts you in the top rank of attorneys in your practice area." Bob continues to be an ardent supporter of the certified specialization program, and proudly mentions that he renewed his certified specialization in criminal law just before he retired in 2000.

According to Bob, one of the benefits of his achieving certified specialization status is that it provided him with the credentials to serve as a lecturer for continuing legal education seminars, including CEB and the National Institute of Trial Advocacy. It also opened the door to being asked by both the Santa Clara County Public Defender's Office and the Santa Clara County Bar Association to train new criminal defense lawyers. Bob has served as a lecturer for CEB in criminal law since 1979, as well as, with the California Public Defenders Association, the Santa Clara County Bar Association, and was a contribut-

Continued on Page 10

Three Simple Tips for Marketing Your Certification

Teresa Y. Warren*

You've done it! You've put in the time, passed the test and now you are a certified specialist. You need to let the world know…but how?

Here are three easy-to-do tips that recent and seasoned specialists can do today. In coming issues of *The Digest*, we'll provide more marketing ideas.

1. Put your certification on your stationery. Doug Bohne, a certified specialist from Walnut Creek, displays the California Board of Legal Specialization logo on his business card. Directly under his name on the card appears "C*ertified Specialist in Estate Planning, Trust & Probate Law.*" Everyone that Doug hands his card to instantly sees that he has some extra - and impressive - credentials.

You can also place the logo and your specialist title on your letterhead and on your envelopes, note cards, etc. The Board of Specialization (BLS) logo can be downloaded from the Legal Specialization Advertising page on the State Bar website.

2.Include your certification in your email signature. Think how often you send emails. Each email is an opportunity to announce that you are a specialist. For example, use an auto signature that reads: *Jane Doe, Certified Family Law Specialist, The State Bar of California Board of Legal Specialization*."

If you like, you can include the BLS logo in your signature block. However, if your law firm already has a logo and you use it as part of your signature, it might be overkill to have a second logo.

3.Put your certification on your website. At a minimum, you should note your certification on your website bio. If appropriate, use the logo on your bio page and home page. Unlike your business card or email signature, the website lets you explain what your certification means. Consider including a paragraph or two about what it takes to become a certified specialist and why it's important for the users of legal services to retain a specialist as counsel. You can also include a link on your website to the BLS page on the State Bar website.

If you don't have a website, think about creating one. It is less costly than a brochure, allows you to provide up-to-date information, helps consumers of your legal services find it, and lets you differentiate yourself as a specialist.

Teresa Y. Warren

It's important to remember that Rule of Professional Conduct 1-400(D)(6) and Section 17.0 of the Legal Specialization program rules states that a certified specialist should refer to him/herself as certified by the "State Bar of California Board of Legal Specialization." The logo has been created to be used in lieu of the text by specialists certified by the Board of Legal Specialization to state the name of the certifying body. It can be reproduced in either color or black and white. ■

Technical Notes from Bovitz.com: File management -- 2007

J. Scott Bovitz*

You can reduce the paper in your office.

Really.

You are Certified Specialist. You are a little older than the average lawyer.

You were raised as "paper person."

You love paper, student bookstores, and the smell of print. You love law books. You love magazines. (Of course you rip articles out of magazines to read later, promising yourself that you will read these snippets when you are at lunch or on vacation. Doesn't everyone?) You have a tower of 42 old Daily Journals; your tower is about to collapse.

You have embossed stationery. You document almost everything in writing to your clients. You file away your client's holiday cards. You keep nice folders with labels like "correspondence," "pleadings" and "client documents."

Your pleadings are a work of art. You keep every red-lined draft, as evidence of your legal craft.

But...

You also have 42 file cabinets. You have large piles of paper and publications. You have stacks of professional reading, including interesting publications that were published before the turn of the century. You keep key pleadings and client materials in piles in your office. (You always feel guilty. As you walk by the piles, they "speak" to you and call out for attention.)

How do you organize this paper? Today, you stack the mail and pleadings by client or topic (aka, "geographic filing"). You send client materials to the file room -- but only after you have taken the opportunity to read everything thoroughly (several weeks later). You pray that your assistant will eventually file the materials in the correct file, but filing is the very last priority in your office.

Do I understand your system?

Here are the first baby steps toward a paperless office.

Handling Mail

Your assistant opens the mail, every day. Ask your assistant to make a client copy of every pleading and every letter regarding their case. Your assistant should stamp the client copy with a note "This is a courtesy copy for your files from the law firm of [YOUR FIRM NAME GOES HERE]. If needed, a communication from one of our professionals will follow."

After the client copy is already in the mail, your assistant will drop the original mail on your desk.

Every day, read every item that arrives in your in box. Bill your time for reading the document. But -- here comes the hard part -- don't do anything. Instead, create two ticklers for future action. One tickler should be set for 21 days in advance of any deadline. The second tickler should be set for 7 days in advance of the deadline. Send the mail back to your assistant (off your desk) to be placed in the client files.

If you follow this system, the mail will not sit on your desk or credenza.

CLIENT DOCUMENTS AND DOCUMENT PRODUCTIONS

If you are lucky, your clients will send you boxes of documents.

Before you look at the client documents, ask your assistant to send the documents out to your copy service. (In Los Angeles, I use Concord Document Services, Inc. at <http://www.copying.la>; ask for David Serrano. The Board of Legal Specialization regrets that it cannot sponsor or guarantee the quality of any vendor, including Concord.) Your photocopy service will scan the massive documents into PDF or TIFF format. I prefer multiple page PDF files, by document. The document service will give you a CD, which you can read on the computer. Immediately send the original client documents back to the client!

Parties in litigation may want to send you large document productions. At the early meeting of counsel, ask all parties to send you a CD with document productions (without paper copies).

Buy two large screens for your computer. You can look at the documents on your left screen, while your calendar is open on the right screen. (You may want to use Adobe Acrobat 8.0, which will "Bates stamp" your own document productions and OCR the materials for later searching by key word.)

PACER AND FEDERAL LITIGATION

If you are in a federal litigation practice, learn how to use Pacer. Let Pacer replace your paper docket and pleadings files. This feels odd, but it works.

E-MAIL

Some professionals keep all letters and e-mails in one virtual correspondence file. They scan paper letters when they arrive. They put one electronic copy in a "folder" on the network, organized by day of arrival. They put another electronic copy in the "client file" on your network. They send the original paper letters to the clients.

These folks are cool.

No Jokes

Don't send or receive jokes by e-mail. These just clog up your in box. Also, some jokes are so funny that they interrupt your work flow.

Professional Reading

Every 60 days, just throw out the oldest unread (or partially read) magazines and professional materials. Don't keep more than ten Daily Journals in a stack.

You will never start on the professional reading pile, if your pile is daunting.

Form Files

Scan your form files and put these on the server. Use long, helpful titles. Let Google's desktop search help you find these documents, when needed.

Don't send or receive jokes by e-mail. These just clog up your in box. Also, some jokes are so funny that they interrupt your work flow.

Clear the Deck

Before you go home every night, remove everything from your desk. The pleadings and files should go back in the file room. When you arrive in the morning, your desk will be almost clear (except for that note from the early rising senior partner).

These tips won't completely solve your paper problem, but they will help. ■

Bob Weeks

Continued from Page 7

ing editor for CEB's publications on both California Criminal Law Practice and Procedure and California Drunk Driving Law. In January 1996, Bob was given the Byrl Salsman Award by the Santa Clara County Bar Association in recognition of his long service to the profession and community, which is the highest award the Santa Clara County Bar Association presents.

If the foregoing wasn't enough, Bob has served continuously as a delegate to the State Bar Conference of Delegates (now the Conference of Delegates, California Bar Association) since 1972 and served as the chair of the Conference of Delegates in 1997. Since his retirement in 2000, Bob has represented the Santa Clara County Bar Association in the ABA House of Delegates, a position which he will continue to hold through 2008. He previously served on the ABA Standing Committee on Paralegals. Bob is also a Fellow of the American Bar Foundation and a Life Fellow at The Foundation of the State Bar of California. While in his late 50s, Bob also found time to participate in "Wheels of Justice," a bicycle ride across America which was a fund raiser for the community legal services of San Jose, California.

Prior to passing the bar, Bob graduated with a Bachelor's Degree in public service from UCLA in 1964 and obtained a Juris Doctorate Degree from UCLA School of Law in 1967. He also served as a law clerk with the United States District Court in Sacramento, and after obtaining his law degree spent a couple of years with the United States Navy in the Judge Advocate Generals Corp.

Bob and his wife Nancy have long been involved in several community activities in the San Jose area and were honored by the Mayor of San Jose and the San Jose City Council in 1988 for their work with the Beyond War Foundation. Bob and Nancy are the proud parents of two adult children, Carolyn and Allen, who are both Yale graduates. Daughter Carolyn is both a professional chef and the mother of Bob and Nancy's two terrific grandchildren Zoe and Max. Son Allen is a freelance cameraman in New York City.

In concluding his thoughts on certified specialization, Bob states that, without going through the certified specialization process in criminal law, he would not have been exposed to the full breadth and depth of criminal law practice. He also states passionately that lawyers are noble instruments of justice who help people. ■

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Teresa Warren (L) and Brad Watson provide info about Legal Specialization to a visitor to the BLS booth during the 20 Annual Meeting.

Lex Lingua Part II

By James W. Talley

Despite the high level of education required to enter the legal profession, lawyers and judges nonetheless abuse and misuse the English language with alarming regularity. The technical term for such mistakes is *solecism*, derived from the Greek *soloikismos*, which literally means "*speaking incorrectly*." One embarrassing example of a judicial solecism occurred a few years ago as I sat in a courtroom shortly before the lunch hour waiting for the judge to conclude the hearing he was presiding over so I could obtain his signature on a stipulated order. As I watched the proceedings, the judge expressed his anger at an argument that had been made three times by one of the lawyers to which the judge responded angrily each time, "I am really annoyed with your ingenuous argument and I don't want to hear it again." After the hearing concluded, the judge invited me back to his chambers, and after I obtained his signature on the stipulated order, I trepidatiously inquired of the judge as to whether he had intended to use the word *ingenuous* in scolding the attorney in the just concluded hearing. After initially responding "yes," he opened his dictionary and with a look of horror on his face he said "Oh my God, I was complimenting him." The word that the embarrassed jurist had intended to use was of course *disingenuous,* meaning insincere.

I recently witnessed an equally inappropriate utterance during a break in one of my hearings. Specifically, my opposing counsel attempted to ingratiate herself with the court reporter by describing the manner in which the court reporter conducted herself in performing her courtroom duties as *officious*. Alarmed at the (presumably) unintended insult that I just heard, I inquired of opposing counsel as to whether she had really intended to use the word *officious,* which the Oxford English Dictionary defines as "*asserting authority or interfering in a domineering way*." Opposing counsel disagreed, contending that the term *officious* was a positive term, meaning "*accommodating, solicitous, eager to please.*"Intrigued by our definitional disagreement, I did some research (*Garner's Modern American Usage*) and learned that, while the term *officious* had some positive connotations in 17th Century England, the modern definition is unequivocally "*meddlesome; interfering with what is not one's concern*." As a postscript on this officious subject, it should be noted that if indeed the term *officious* was still possessed of both its ancient definition ("*eager to please*"), as well as its modern definition ("*meddlesome, interfering in a domineering way"*), it would fall into the category of "*Janus*" words (the technical term for Janus words is contranyms). Janus words got their name after the Roman god Janus who had two faces that looked in opposite directions.

While on the subject of Janus words or contranyms, I would be remiss if I didn't address the much abused and routinely misused terms *discriminate* and *discrimination*. When I was in grade school, the term was routinely used by advertisers in a positive way, to convey the message that their product was made to appeal to customers having or showing good taste or judgment. In fact, the etymology of the definition of *discriminate* is simply *"to make a distinction or choice."* Ultimately, the United States Supreme Court in one of its 1960's Civil Rights decisions striking down a Southern State statute as unconstitutional did so finding that its provisions constituted *invidious discrimination*. Unfortunately, the term *discrimination* became uncoupled from its pejorative modifier and has been used ever after by the media and the lemmings constituting their audience as though the term *discrimination* describes wrongful or unlawful actions and decisions even in the absence of its negative modifier. My concern, however, is not that the use of the term has been corrupted in conversational English but rather that the corruption has infested the term in the legal arena as well. I cringe every time I read

Jame s W. Talle y

appellate decisions or hear lawyers and judges in court proceedings referring to the decisions or actions of employers or landlords as discriminatory without making any distinction between *lawful discrimination* and *invidious discrimination*. Certainly, an employer who runs a daycare center discriminates when they refuse to hire convicted sex offenders and landlords do likewise when they refuse to rent or lease their premises to convicted arsonists or evict tenants who fail to pay their rent without legal cause. As author Bill Welch states in his book, *Lapsing Into A Comma,* "Discrimination can be a very good thing - - even the world's most discriminating people practice it. You don't tolerate discrimination? Then I guess you will be fighting for the rights of the world's child molesting daycare workers and nose picking sandwich makers."

Another example of verbal butchery that is uttered with pandemic regularity in courtrooms is the use of the term *podium* to describe the piece of furniture on which you place your notes and stand behind while addressing the court. As thoughtful speakers know, and indeed as all lawyers and judges should know, a *podium* is a small platform on which a person (orchestra conductors, Olympic medal winners) stand to be seen by an audience. The correct term, of course, is *lectern* ("*a tall stand with a sloping top from which a speaker can read while standing up"*) unless you

happen to be in a church where the correct term is *pulpit*.

The word term/title *realtor* is also much abused both in and out of the legal arena. For reasons that are a mystery to me, judges, lawyers, and litigants mispronounce the word as "*ree-luh-tur*" instead of the proper "*reel-ter*" (two syllables, not three). The second abuse, according to the National Association of Realtors, is that they possess a trademark for the term and therefore the word should be used only in its proprietary trademark sense, thus requiring that it be both capitalized and followed by the trademark sign-Realtor 7. (See Richard Lederer in his book *A Man of My Words* on Page 81). As Lederer points out, "the mispronunciation of ree-luh-tur for realtor is an example of the lexicological disease known as metathesis, which is the transposition of sounds within a word, a condition which many other words have suffered including nuclear (noo-kyuh-lur), jewelry (joo-luh-ree), and comfortable (cumf-ter-bull)."

While on the subject of titles, I am compelled to address the controversy surrounding the use of *Esq*. after attorneys' names. In his engaging book *Language Maven Strikes Again*, William Safire offers the following etymology of the term: "The word Esquire originally meant shield-barrier conjuring the image of Sancho Panza, the squire, schlepping Don Quixote's gear. Later, the term was applied to men of gentle (that is noble) birth who are not quite knights but were considered more than mere gentlemen. Barristers, who could plea at the bar, were entitled to Esq. whereas mere solicitors had to beg for what dignity was left over." Safire states that later, lawyers looking for a way to give themselves the honorific clout that doctors had with doctor and MD, adopted Esq. It was and is purely an affectation. Many women who are lawyers like it, because it shares the pomposity equally. Adding to the complexity of the etiquette surrounding the use of Esq. are these remarks of Brian A. Garner, the author of *Garner's Modern American Usage:"* - - it is worth noting that 'Esq.' is not used on oneself, e.g., neither on a card (which bears Mr. or Ms.) nor on a stamped-and/or addressed envelope enclosed for a reply. But somehow the idea has gotten out that Esq. is something you put after your own name." In short, Garner states that it is both presumptuous and inappropriate for a lawyer, male or female, to put Esq. on their cards, stationery, and self-addressed envelopes. As to the gender issue, Garner states "If you are going to use Esq. following an attorney's name, do it for both sexes. If precisionists are bothered by this practice, they should pretend that Esq., when used after a woman's name, stands for Esquiress," which he notes was recorded in the Oxford English Dictionary as early as 1596.

Having dispatched the *Esq.* conundrum, I am led ineluctably to the matter of the distinctions between the terms lawyer and attorney. On this subject, Brian Garner offers the following: "Technically, lawyer is the more general term, referring to one who practices law. Attorney literally means 'one who is designated to transact business for another'." Garner also points out that, though members of the legal profession don't generally distinguish between the two, the term lawyer is often viewed as having more negative connotations, pointing out that one frequently hears about lawyer-bashing, but rarely about attorney-bashing. In his book *The Careful Writer 60*, Theodore M. Bernstein deduces that since an attorney is really an agent and a lawyer is an attorney only when he has a client, it may be that a desire of lawyers to appear to be successful in their profession accounts for their leaning toward the designation attorney.

While contemplating the conclusion of this piece, I remembered a terrific book by James Lipton entitled *An Exhaltation of Larks* in which he lists over a thousand witty and fanciful terms for groups of the vast array of creatures and concepts on planet earth. Lipton, who refers to these words as either "*nouns of multitude*," "*company terms*," "*nouns of assemblage*," "*collective nouns*," or "*group terms*," lists the following which relate to the practice of law:

A BENCH OF JUDGES

A SHADOW OF PROCESS-SERVERS

A SENTENCE OF JUDGES

A DISCORD OF EXPERTS

A QUARREL OF COMMISSIONERS

A LOT OF REALTORS

(Remember, two syllables not three)

A BITCH OF CLIENTS

A HO! HO! OF LOOPHOLES

AN EVASION OF SCOFFLAWS

A PITFALL OF FINE PRINT

A COLLAR OF COPS

AN INSANITY OF CLAUSES

A CLOUD OF WITNESSES

A PRESUMPTION OF PROSECUTORS

A PANEL OF JURORS

A DOCKET OF CASES

A DELIVERANCE OF ACQUITTALS

A LENGTH OF BRIEFS

Amongst Lipton's "*nouns of multitude*" are two terms for those of us who practice law, thus saving the best and most appropriate for last:

AN ESCHEAT OF LAWYERS, or

AN ELOQUENCE OF LAWYERS

Now that the main course is concluded, I offer this bit of trivia for dessert (just deserts?), Charles Harrington Elster in his book *What in the Word* explains that the word for lawyer in Spanish is *abogado*, which evolved from the original term for lawyer, *avocado*, spelled just like the fruit. Elster points out, however, that when the Spaniards conquered Mexico, the Aztec word for the fruit of the avocado tree was *ahuacatl*, which was also their slang word for ***testicle***. The conquering Spaniards, however, had

trouble pronouncing *ahuacatl* and for them it came out as *aguacate*, which was later translated as *avocado*, which at that time was the word for *lawyer*. In modern Spanish, the term *aguacate* was preserved for the fruit and the term *avocado* for lawyer which was later changed to *abogado*, while the English language adopted *avocado* for the fruit. Elster's punch line to this etymological trivia is his statement that "One has to wonder if there were any other reasons to associate lawyers with testicles." ■

Estate Planning for Non-Traditional Couples

Con t in u ed f r om Page 6

advised that they have the right to seek counsel about that letter. Finally if an actual conflict arises, and the attorney cannot properly represent both clients he or she must withdraw as counsel and advise the parties to obtain independent legal counsel.

Understanding the Marital Status and Family

Relationships of the Partners

For couples in this situation who have not together gone through the marriage or registration process, it is important that the attorney inquire as to the exact, current marital status of each of the partners, the names and ages of any minor children that each of the partners have, and of the other parent of such minor children. It is of critical importance that no spouse or minor child be in the position of being considered an omitted spouse or child of that partner and thereby acquire an intestate share in that partner's estate. In this regard, see Probate Code Sections 21623.

The recent case of *Elisa B. v. The Superior Court of El Dorado County* (2005) 37 Cal.4th 108 adds an important dimension to considerations of estate planning for non-traditional couples, especially those households headed by two persons of the same sex. In *Elisa B.* the California Supreme Court found that a woman who had agreed to raise her partner's twin children, had supported the artificial insemination process, and had held the children out as her own was a parent per the Uniform Parentage Act (*Family Code* Section 7600 et seq.). The Supreme Court's decision was made regardless of the fact that the couple had not registered as domestic partners.

The decision in *Elisa B.* must be taken into account when providing services to individuals or couples who have not registered but whose households include children with whom either partner has taken a parental role. It is a foreseeable result of the Supreme Court's decision that a child born into such a household could later claim the status of an omitted heir.

Inquiry into Existing and Future Assets and Obligations

The attorney should inquire closely into the nature, extent and ownership of all principal assets and obligations before proceeding further. Further, the attorney should not be satisfied by the clients' word as to the titling and beneficiary designations of significant assets; rather, the attorney must examine the deeds to all real property, the most recent statements of brokerage accounts, and the face sheets and beneficiary designations of life insurance policies and retirement benefits.

Are the parties in agreement as to the distribution of those assets? What is the partners' intent as to the distribution of those assets and of significant assets, for example a residence, to be acquired in the foreseeable future?

Does either or both of the partners have significant debts? Is it the intention of the partners, or either of them, to incur substantial debt in the foreseeable future - for example, in connection with the purchase of a residence? What is the position of each party as to those debts? If the debt is, or is to be, joint, will the partners be jointly and severally liable? If the debt is, or is to be, an individual debt, will the debtor partner hold the other partner harmless and agree to defend him/her therefrom?

Explanation of the Property Law as it Affects the Cohabitants

The parties must be given to understand the differences between separate property, joint tenancy, tenancy in common, and payable on death holdings as it affects their property. Are the parties in agreement as to what that holding should be as to each principal asset?

Cohabitation Agreement

Because the cohabitants will be holding many assets during the period of their life together, it is important that they execute a cohabitation agreement in addition to the usual estate planning documents.

In the cohabitation agreement, the partners should define the rights and responsibilities flowing from their relationship as to:

(1) The respective interests in real and personal property acquired by either or both of them;

(2) The interest of a partner, if any, in the income of the other partner;

(3) Whether a partner will commit to the ongoing financial support of the other partner;

(4) The right of a partner to be supported, and of the other partner to give that support, if the cohabitation terminates;

(5) Whether the parties agree to pool their income;

(6) Whether the parties agree to hold all property that is acquired during their relationship in accordance with the law governing community property;

(7) The agreement of the parties with respect to raising and supporting any children of the relationship, recognizing that the parties' agreement regarding children is not binding on the Court should the matter ever come before the Court for determination.

The California Court of Appeal in the famous case of *Marvin vs. Marvin* (1976) 18 Cal.3d 660, held that the Court shall enforce such an agreement (except of course with

respect to child issues) so long as the agreement does not rest on the consideration of "meretricious sexual services". Cohabitation agreements are governed by the law of contract, which is contained in the Civil Code, and not by the Family Code, except regarding child issues.

Usual Estate Planning Documents

The parties will probably need to execute the usual documents of estate planning, including wills, a joint living trust or separate living trusts, advance health care directives, general and/or limited durable powers of attorney for financial management, nominations of conservator, funeral and burial/cremation instructions, trust transfer deeds, assignments of assets, and so forth.

The estate planner must remember that most of the favorable federal tax laws which are central to estate planning for married couples just do not work with non-married cohabitants (or to same sex domestic partners, whether registered or not). For example, there is no marital deduction for non-marrieds. There is no inter-spousal deeding without adverse tax consequences. Thus, the simple placement of one cohabitant's property into a joint trust may constitute a taxable gift. So may the pooling of assets or the deeding of one cohabitant's property to the other in order to equalize the estates. In short, even transactions that appear innocuous must be reviewed closely.

Naming Back-Up Fiduciaries

It is essential that the estate planner have the clients name alternate and second alternate executors and successor and second successor trustees, agents and conservators, so that if the partner of the testator, trustor, principal or conservatee does not survive or is incapacitated, the family of the testator, trustor, principal or conservatee can not step in to drastically alter the administration of the will, trust, advance health directive, power of attorney, or conservatorship. This occurs frequently when the family is estranged, distant or hostile and thus might be motivated to thwart the intent of the client. Further, if the client feels strongly that he/she does not want the family to serve in a fiduciary capacity, that should be expressly stated in the document.

No Contest Clauses

To help ensure that the estate plan of the cohabitants is not overturned by a contest of the principal dispositive instruments, it is frequently quite helpful to include no contest clauses in the trust(s) and will(s) directing that unsuccessful contestants receive nothing under the instrument. And, of course, the no contest clause should be coupled with a provision leaving some distribution of modest, but not inconsequential, value to those family members or others who might be expected to mount a challenge if they had nothing to lose by doing so.

III. ESTATE PLANNING FOR COUPLES WHO HAVE REGISTERED AS DOMESTIC PARTNERS

Ethical Issues

The issues presented here, with respect to potential conflict of interest, actual conflict of interest, dual representation versus independent counsel, and conflict waiver letters are the same as those set forth in Section II, above.

Understanding the Family Relationships of the Partners

By definition, neither partner can be married for there to be a valid registered domestic partnership. (See Section I, Requirements for Domestic Partnerships, above.) The discussion of family relationships, including the spousal support obligation to a former spouse, the child support obligation to the other parent of a minor child, and the need to name any such former spouse or minor child in the estate planning documents in order to avoid their treatment as omitted and entitled to an intestate share, is equally applicable here.

Ensuring that the Domestic Partnership Has Been Registered

The attorney must not take the partners' word for the critical fact of registering with the Secretary of State under DPRRA. The attorney should request and examine a copy of the Declaration of Domestic Partnership that was filed in Sacramento. This is of great importance in light of the several different species of domestic partnership that were available at one time both

and after the time of registering with the Secretary of State are presumed community property, and if they were purchased with the personal service earnings of either or both of the partners during that period are certainly community property unless the parties have contracted to the contrary. And if, during the same period, one of the partners has incurred a debt, that debt is also owed by the other partner, unless the parties have contracted to the contrary.

Explanation of the Property and Spousal Support Lawsas They Affect Registered Domestic Partners

With respect to property, not only must the attorney explain to the registered domestic partners the differences between separate property, joint tenancy, tenancy in common, and payable on death holdings, but, most importantly, how community property, both with regard to assets and debts, factor into the partners' relationship. In particular, the attorney must carefully explain how community property differs from separate property with respect to lifetime entitlement, the ability of the owner to transfer it by inter vivos or testamentary instrument, and perhaps most importantly the statutory requirement of an equal division of the community property in the event of a dissolution of the domestic partnership, which is exactly comparable to the situation in a marital dissolution.

The attorney must explain to the registered domestic partners that the duties to support the other partner during the partnership, and after the dissolution of the partnership through alimony awarded by the Court, are just as applicable as in the case of marriage. Further, the Family Court always has jurisdiction over the rights of minor children, whether such children are born of marriage or of domestic partnership (registered or not).

The registered domestic partners must be given to understand that their legal relationship is generally that of a marriage except that virtually none of the benefits that federal law confers upon spouses apply to same sex couples. Those excluded federal benefits include, but are by no means limited to, those relating to immigration, Social Security, Medicare, treatment as a couple under federal tax law, veterans' benefits, and federal employment benefit laws such as ERISA.

Domestic Partnership Agreement

The domestic partnership agreement is the analog of the cohabitation agreement for heterosexual couples and non-registered same sex couples and is recommended unless the partners agree that their relationship will be governed by the same rules that apply to marriage. That is because a domestic partnership agreement clearly defines the relationship of the partners with regard to several issues. For example, will partnership personal service earnings be considered community property, as provided by the divisional law or will they be the separate property of the earning partner? Will accretions to separate property be considered mixed under *Pereira vs. Pereira* (1909) 156 Cal.1, or *Van Camp vs. Van Camp* (1921) 53 Cal. App. 17? Or are they to remain entirely the separate property of the partner who brought them into the partnership? And if the domestic partnership is ultimately dissolved, will the partners waive or limit the amount and duration of alimony?

In sum, a domestic partnership agreement is analogous to a prenuptial agreement if it precedes the partners' registering with the Secretary of State. Conversely, it is analogous to a postnuptial agreement if it is executed following such registration.

The requirements for the enforceability of prenups (or their analogs in the domestic partnership situation) are stringent. See the Uniform Premarital Agreement Act, Family Code Sections 1600-1617 ("UPAA"). As a practical matter, although not strictly required by UPAA, the parties should have independent counsel, the parties should exchange full information as to assets and obligations, and the agreement should be fair (whatever that means). The requirements for enforceability of postnups (or their analogs) are even more stringent, since the parties are subject to interspousal fiduciary duties under Family Code Sections 721 and 1100; with postnups, an adequate consideration is required. See *Messenger vs. Messenger* (1956) 46 Cal.2d 619.

Usual Estate Planning Documents

The discussion of this topic in Section II, above, applies with a vengeance in the context of registered domestic partners. Here, however, the planning is very much like estate planning for married couples except, alas, that the marital deduction is non-existent, there are no federal interspousal tax-free transactions, and placing one domestic partner's property into a joint trust and comparably innocuous-appearing transactions may constitute federal taxable transactions. Thus, the estate planner must have his income, gift and estate tax thinking cap on at all times. And the frequency of the accountant's preparing gift tax returns will be significantly greater than when dealing with marrieds.

When drafting estate planning documents, from trusts to wills to financial powers of attorney and advance health care directives, it is imperative to set forth the existence of the domestic partnership and the date of the partners' registration, so that it is clear on their face that the documents are to be treated as analogous to those involving married couples.

For many reasons, the estate planner must handle transmutations of property with care. For one thing, the transmutation must strictly comply with the requirements of Family Code Sections 850 et seq., to wit: there must be a writing, it must constitute an express declaration of intent to change the character of particular property, for example, from separate to community; and it must be made, joined, consented to, or accepted by the partner who is adversely affected by it. Additionally, attorneys drafting such documents must be acutely aware of significant potential for conflicts of interest, particularly with respect to transmutations, since they almost always involve one party gaining and the other party losing as to the property involved.

By the same token, transmutations which occur after registration as domestic partners always are presumed the result of undue influence in a family law or family law-analogous setting, because in the context of an existing marriage or registered domestic partnership, any transaction which benefits one spouse or partner to the detriment of the other spouse or partner is

presumed the result of undue influence and invalid. See, for example, *Marriage of Haines* (1995) 33 Cal.App.4th 277 and *Marriage of Lange* (2002) 102 Cal.App.4th 360.

IV. Conclusion

Unmarried heterosexual couples and the attorneys who represent them have long recognized that cohabitation, without the benefit of clergy or the County Clerk's office, is fraught with significant risks, both as to legal and tax aspects. For same sex couples and the lawyers who advise them, however, the recent domestic partnership statutes present a brave new world. It is a world in which same sex couples possess essentially all the benefits of married couples, except for federal tax benefits, but also are subject to the same detriments as married couples, including community property laws, duty of support, and dissolution. It is a world in which such couples and their lawyers must proceed with care. ■

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Endnotes

1. The Supreme Judicial Court of Massachusetts ruled in 2003 that the denial of marriage rights to same-sex couples was unconstitutional. Massachusetts remains the only state in the Union that recognizes same-sex marriage. Vermont and Connecticut provide for civil unions between same-sex partners. New Jersey, Maine and California provide for domestic partnerships.
2. The registration referred to here is required to have been at the state level. Prior registrations at the municipal or county level in California were nullified with the passage of the Domestic Partner legislation. See below.
3. Probate Code Section 6401
4. Probate Code Sections 8461, 8462
5. Probate Code Section 1811
6. E.g., Probate Code Section 1812
7. E.g., Probate Code Section 1874
8. Apparent anomalies in a review of Probate Code sections include the provisions relating to guardianship and conservatorship and specifically the interested persons who may appear at hearings, who may file requests for special notice, persons whose names must appear in the contents of petitions and who may object to petitions or accounts. Viz., both spouses and domestic partners of conservatees but only spouses of wards may claim the above rights. See Probate Code Sections 2622, 2653, 2700, 2803, and 2805. As well, Probate Code Section 2430, which covers payments of debts and expenses by a guardian or conservator, allows for the provision of "the necessities of life" to the "spouse and minor children of the ward or conservatee" but allows for the provision of only "basic living expenses . . . to the domestic partner of the conservatee."
9. Family Code Section 308.5
10. Family Code Section 297.5(k)

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